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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 John Ryan,

10 Plaintiff,

11 v.

12 Costco Wholesale Corporation, et al.,

13 Defendants.
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No. CV-22-00419-PHX-DLR

ORDER

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16 Plaintiff John Ryan brings this premises liability case against Defendants Costco
17 Wholesale Corporation and Costco Wholesale Membership Incorporated based on a slip
18 and fall that occurred in February 2020. Defendants have moved for summary judgment.
19 (Doc. 34.) As Exhibit 3 in support of that motion, Defendants submitted to the Court a disc
20 containing two angles of surveillance footage of Plaintiff's fall, along with a media player
21 program with which to view the footage. Defendants move for leave to file Exhibit 3 under
22 seal. (Doc. 36.)

23 The public has a right to access judicial records. *San Jose Mercury News, Inc. v.*
24 *U.S. Dist. Court—N. Dist. (San Jose)*, 187 F.3d 1096, 1101 (9th Cir. 1999). The Court
25 therefore begins "with a strong presumption in favor of access to court records," *Foltz v.*
26 *State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003), and a party seeking
27 to overcome this presumption and file a record under seal generally must provide a
28 compelling reason for doing so, *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092,

1 1096 (9th Cir. 2016). The Ninth Circuit has carved out an exception to this general rule
2 “for sealed materials attached to a discovery motion unrelated to the merits of the case.”
3 *Id.* at 1097. A party seeking to seal such materials “need only satisfy the less exacting ‘good
4 cause’ standard.” *Id.* Although earlier decisions from the Ninth Circuit sometimes used the
5 words “dispositive” and “non-dispositive” to describe the dividing line between those
6 records governed by the compelling reasons standard and those governed by the good cause
7 standard, the Ninth Circuit has since clarified that “[t]he focus ... is on whether the motion
8 at issue is more than tangentially related to the underlying cause of action.” *Id.* at 1099.
9 The exception to the ordinary compelling reasons standard applies only to records that are
10 unrelated or merely tangentially related to the merits of a case. Sealing documents
11 appended to a motion that is more than tangentially related to the merits of a case requires
12 a compelling justification. Defendants’ motion is governed by the more demanding
13 compelling reasons test because the exhibit they seek to seal is attached to a dispositive
14 motion and more than tangentially related to the merits. Defendants offer two reasons why
15 they believe Exhibit 3 should be sealed, neither of which the Court finds compelling.

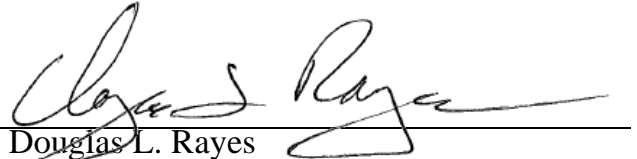
16 First, Defendants note that they designated the surveillance footage as
17 “Confidential” pursuant to the protective order entered in this case. (Doc. 19.) “[B]ut the
18 fact that a document is treated as confidential pursuant to a protective order is not, without
19 more, a compelling reason for sealing that document once it is used to support a dispositive
20 motion.” *Blum v. Banner Health*, No. CV-20-00409-PHX-DLR, 2021 WL 5446460, at *1
21 (D. Ariz. Nov. 22, 2021).

22 Second, Defendants argue that the surveillance footage “is deserving of protection
23 from use or publication outside the scope of this lawsuit” because “Costco’s primary use
24 for its surveillance system is asset protection and theft deterrence[.]” (Doc. 36 at 1.) But it
25 is common knowledge that commercial retail businesses routinely use surveillance cameras
26 to protect their wares and deter theft. The unremarkable fact that Costco stores use
27 surveillance cameras is not a compelling reason to seal the footage. Accordingly,

28 **IT IS ORDERED** that Defendant’s motion to seal (Doc. 36) is **DENIED**. If

1 Defendants want the Court to consider Exhibit 3, they must resubmit the document for
2 filing in the public record within **5 days** of entry of this order, in accordance with LRCiv
3 5.6(e).

4 Dated this 6th day of February, 2024.

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9 Douglas L. Rayes
United States District Judge